NG CHIAT HUNG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Hill, J.) January 26, 1950]

[Ipoh — Criminal Appeal No. 96 of 1949]

Food Control Proclamation, ss. 2, 15 and 17 — Rationed foodstuff — Controlled article.

This was an appeal against the conviction of the appellant on a charge of being in control of a rationed foodstuffs, to wit, rice an offence under section 15 of the Food Control Proclamation.

Held, that section 15 of the Food Control Proclamation deals with "controlled articles" only and does not create any offence in regard to "rationed foodstuffs."

APPEAL from Sessions Court.

Lim Cheng Ean for the appellant.

E. N. Griffith-Jones for the respondent.

Hill, J. : — In this case the Appellant was tried on the following charge on the 29th November, 1949, in the Sessions Court, Taiping :—

"That you Ng Chiat Hung on 21st September, 1949 at about 10.00 a.m. at No. 118 Kota Road, Taiping not being the holder of a Food Control Licence, were in control of 100 bags of Brazilian rice which is a rationed foodstuff, with the intention of committing an offence of dealing in such rationed foodstuff, an offence under Section 15 of the Food Control Proclamation No. 10/45 and Government Notification 71 of 19th February, 1948 and punishable under Section 17 (i) of Proclamation 10/45."

According to the judgment of the learned President the Appellant was convicted of the offence of being in control of a rationed foodstuff with the intention of dealing in such rationed foodstuff without being the holder of a Food Control Licence.

Both Section 15 of the Food Control Proclamation No. 10/45 and Government Notification 71 of 19th February, 1948, are concerned with "controlled articles" only. In Section 2 of the Proclamation are defined "controlled article" and "rationed foodstuff", two separate and distinct entities.

Whatever the intention of the Food Control Proclamation may be it does not create by Section 15 any offence in regard to "rationed foodstuff." Nor does Government Notification 71.

It was contended by Mr. Lim Cheng Ean on behalf of the Appellant that there was an irregularity in the trial which could not be cured because the charge was :—

(i) misleading and confusing;

(ii) neither a charge under Section 15 of the Food Control Proclamation No. 10/45 or under Government Notification 71 of 19th February 1948 but a combined charge under both and

(iii) referred to rationed foodstuff instead of controlled article.

I agree with this submission and am of the opinion that the charge was bad and amounted to a nullity.

The appeal is allowed and the conviction, sentence and order of confiscation quashed.

If it is considered desirable there can be a fresh trial and I therefore refrain from expressing any opinion on the other points raised by Mr. Lim Cheng Ean, but I trust that full consideration will be given to the question of re-trial and whether the procedure adopted in this matter was correct and proper before further proceedings are instituted against the Appellant.

Appeal allowed.

HABSAH BINTI MAT v. ABDULLAH BIN JUSOH.

[Orig. Civ. Juris. (Callow, J.) February 14, 1950]

[Alor Star — Civil Suit No. 108 of 1949]

Malay Customary Law — Sharikat.

This was a claim by the plaintiff for the transfer of a half-share in land, which was registered in the name of the defendant. The plaintiff was the wife of the defendant, but she had been divorced and had subsequently remarried.

Held, (1) that by Malay Customary Law in Kedah, a woman is entitled on divorce to half of any property acquired during the coverture by joint effort and that her subsequent re-marriage does not bar or extinguish her claim; (2) that on the facts in this case the plaintiff had established her claim to a half-share in the land and there must therefore be judgment in her favour.

Cases referred to :—

(1) *Rasinah v. Said, Taylor's* Malay Family Law p. 29.

(2) *Laton v. Ramah, Taylor's* Malay Family Law p. 35.

CIVIL SUIT.

Plaintiff in person.

James Taylor for the defendant.

Cur. Adv. Vult.

Callow, J. : — The claim is one for sharikat and reads :—

(a) That defendant make a transfer of her ½ share in the 10 relongs land to plaintiff's name on the ground above-mentioned valued $750.00.

(b) One female buffalo valued at $150.00.

(c) The cash as much as $35.00

At the conclusion of the plaintiff's case Mr. Taylor for the defendant submitted there was no case to answer and called no evidence.

Mr. Taylor's first point was that the plaintiff having been divorced and having subsequently remarried, forfeited all claims to sharikat; furthermore

that any claim she conceived she possessed should have been made before the Kathi at the time of the divorce.

The parties are primitive peasants. There was disagreement and the husband (the defendant) divorced the plaintiff by Mohamedan law about a year ago. There is no evidence that the Kathi was notified, and I do not find that sharikat can only be claimed before the Kathi. It may be that the woman does not know of the divorce until after it has been pronounced.

The parties were married on the 8th of April, 1926, (Exhibit "B") but I had no evidence of the registration of the divorce in accordance with section 5 of Enactment No. 109 (Sheriah Courts).

As to Mr. Taylor's other point it is established in *Rasinah v. Said*[1] that a woman can claim sharikat on divorce by the husband, and I find no reason why re-marriage should bar or extinguish such a claim.

It is a matter of regret that more publications on research on this subject of sharikat are not available. Malay Family Law published in 1937 by Taylor J. contains much valuable information, and a further study and summary with reported cases would be most valuable.

Quite clearly it is wrong to regard the subject as one of Mohamedan Law. Gompertz C.J. in *Laton v. Ramah*[2] rightly declared it to be Malay customary law, and it is established that on divorce a woman in Kedah is entitled by customary law to half of any property acquired during coverture by joint effort.

In this case, I find it established that on marriage the parties possessed no real property. On the 15th of October, 1934, some eight years after marriage, Exhibit "A" shows the acquirement of land S.P.K. 4057. Still later State land Surat Akuan 165/02 was obtained, but that reverted to the State on the 1st of October, 1949, and the plaintiff makes no claim in respect of this property. In both instances the titles are and were respectively in the name of the defendant.

There is evidence that the plaintiff was seen working over a period on the land S.P.K. 4057 with her then husband the defendant.

In my judgment once it is established that the property was acquired subsequent to marriage, and the wife was seen working thereon, a presumption arises that on divorce it is subject to sharikat. This can be rebutted by evidence showing that the land was acquired by the sole efforts and resources of the husband. It is impossible in most cases for the woman to prove the purchase of the land from monies acquired by joint labour, the family purse is a private matter with the husband and wife, it can seldom be proved by extraneous evidence. If, for example, the husband inherited money or earned it separately, and with such funds purchased land, then obviously the property is vested in him alone, but the fact that he is the title holder is not in itself sufficient to dismiss the wife's claim; it is natural for the title to be registered in the name of the husband.

To revert to the claim, there was insufficient evidence to establish item (c) for $35/-, nor do I find enough to sustain item (b) in respect of cattle, but as regards the claim for half the land in S.P.K. 4057 the plaintiff's evidence stands.

I therefore adjudge that the plaintiff has established her claim to ½ share in the land S.P.K. 4057, and in the absence of defence evidence to rebut the claim succeeds.

The Assistant Registrar of this Court is empowered to effect the necessary transfer to the plaintiff. Each party to bear their own costs.

Order accordingly.

PUBLIC PROSECUTOR v. TALIB BIN AHMAD.

[Orig. Crim. Juris. (Laville, J.) February 14, 1950]

[Muar — Emergency Case No. 2 of 1950]

Arms Enactment, Johore, ss. 1(ii), 3, 4, 53 and 54 — Firearms and Ammunition (Unlawful Possession) Ordinance, 1946 — Arms the property of or under the immediate control of the Government.

In this case the accused was charged with possession of a firearm which was not a firearm he was duly licensed to carry under the Arms Enactment of Johore. On the facts it appeared that the accused was an Auxiliary Police Constable and had got hold of the unregistered weapon in an attempt to aid police informers.

Held, that when the accused succeeded in getting hold of the unregistered weapon, he was acting within the scope of his duty and the weapon was therefore under the immediate control of the accused as an Auxiliary Police Officer and a member of the Government of Johore and that he therefore required no licence under the Arms Enactment to justify his possession.

CRIMINAL TRIAL.

D. B. W. Good for the Public Prosecutor.

Accused in person.

Laville, J. : — In this case accused Talib is charged with possessing a firearm, to wit, a rifle which was not a firearm he was duly licensed to carry under the Arms Enactment of the Laws of Johore and had thereby committed an offence against sec. 4 of the Arms Enactment punishable under sec. 3 of the Firearms and Ammunition (Unlawful Possession) Ordinance, 1946.